**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 12869 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE DN PATEL**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**ANANDBHAI A HALANI - Petitioner(s)**
**Versus**
**MUKESH KANTILAL PARMAR & 5 - Respondent(s)**

==========

**Appearance :**

MR KR BRAHMBHATT for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 5.
MR SHITAL R PATEL for Respondent(s) : 6,

==========

**CORAM : HONOURABLE MR.JUSTICE DN PATEL**

**Date : 25/09/2007**

**ORAL JUDGMENT**

1. Having heard the learned Counsel for both sides and looking to the facts and circumstances of the case, I see no reason to entertain the

present petition as the order passed by the trial Court is correct, legal and true, mainly for the following facts and reasons :

I. It appears from the facts of the case that the present petitioner (original plaintiff) has instituted Civil Suit No.2891 of 2004 for specific performance of Agreement to Sell dated 16.9.1998. It is alleged by the petitioner (original plaintiff) that as there was an Agreement to Sell in favour of the plaintiff, Sale Deed ought to be executed for the suit property. It also appears from the facts of the case that subsequently they came to know that the Suit property has been sold away to the respondent No.6 (original defendant No.6), which should be joined as party – defendant and for getting the stay against them, Applications below Ex.30 and Ex.31 also preferred, which have been dismissed by the trial Court. It appears from the facts of the case that the present petitioner (original plaintiff) has got Agreement to Sell from one Kantibhai Parmar and not from the original owner of the land in question.

II. It also appears from the facts of the case that Agreement to Sell is not a registered document upon which reliance is placed by the petitioner (original plaintiff).

III.It is also alleged by the present petitioner (original plaintiff) that Rs.15 lacs have been paid, but looking to the facts, it appears that it is in cash. No receipts of payment is presented before trial Court. The original owners are Khodabhai Punjabhai Patel and 9 others. The respondent No.6 is a “Netra (Memnagar) Co-Operative Housing Society Ltd.”, registered under the Gujarat Co-Operative Societies Act, 1961. This co-operative society has purchased the property from the original owners by Registered Sale Deed dated 16.8.2005.

IV.It appears from the facts of the case that the petitioner (original plaintiff) who has got Agreement to Sell of September, 1998, but has not taken any care for filing any Suit up to 2004. Kantilal Parmar, who is power of attorney holder, as per the allegation of the original plaintiff, of Khodabhai and others, had given them Agreement to Sell. It is also alleged by the original plaintiff that the same Kantilal Parmar has sold away the property to the present respondents No.1 to 5 (original defendants No.1 to 5) in the year 1995 and as original respondents No.1 to 5 were trying to sale away the property, the Suit bearing Civil Suit No.2891 of 2004 was instituted and subsequently Applications were given below Ex.30 and 31 for joining the original owners and the aforesaid co-operative society as party – defendant.

V. Looking to the facts of the case the contention raised by the present petitioner (original plaintiff) is not acceptable. The contention is not accepted by this Court mainly for the reason that Kantilal Parmar, who was power of attorney is joined as defendant but the original owners are not joined as defendants, namely, Khodabhai and 9 others. Suit appears to be collusive between plaintiff and defendants No.1 to 5. Upon the suit property now there are already constructed bungalows, 43 constructed units are in existence. Development permission was also taken on 1.12.2005. Building Use permission has also been obtained on 12.8.2006. Even these bungalows have been sold away by the co-operative society to its members. It is contended by the learned Counsel, appearing for the society, that the Suit appears to be collusive in nature, mainly for the reasons that, the original owners, namely, Khodabhai and 9 others, are not joined as party – defendants.

VI. It appears from document on record that defendant No.6 has purchased property from original owners, (not from Power of Attorney) by registered Sale Deed. They are also in possession of property.

2. In these set of circumstances, the order passed by the trial Court is absolutely just, legal, true and correct and in consonance with the

facts of the case. I see no reason to entertain this petition. Accordingly, this petition is dismissed with costs. Rule discharged. Interim relief, granted earlier, is vacated.

3. Learned Counsel, appearing for the petitioner, prays for stay of this order. Learned Counsel, appearing for the respondent, is objecting to this request. Looking to the facts and circumstances of the case the request made by the learned Counsel appearing for the petitioner is not accepted.

(D.N.PATEL, J.)

sas